

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF RHODE ISLAND

FILED

2020 MAR 18 A 10:56

Marcio Alexandro Martinez-Lara  
Petitioner

v

Civil Action No.: \_\_\_\_\_

Crim. Action No.: 17-CR-00116 (WES)

United States of America  
Respondent

MOTION FOR "STATUS UPDATE" PURSUANT  
TO FRAP RULE 1, RULE 3, RULE 4 AND  
RULE 5; PERTAINING TO THE  
DELAYED FILING OF PETITIONER'S  
RECENT FILING FOR MODIFICATION  
OF SENTENCE UNDER 18 USC §3582

NOW COMES Mr. Martinez-Lara (Petitioner), pro se, and moves this Honorable Court to Grant Petitioner a Status Update on why his filing has not been filed (and docketed) with the Court pursuant FRAP Rules and states the following:

- 1) Petitioner filed a Motion for Modification of Sentence pursuant to 18 USC §3582 in light of new case precedent in favor of Petitioner;
- 2) Such a motion was received and signed for on 12/30/19 (See Attachment #1 - Copy of the signed receipt by the Court Clerk);
- 3) As of this filing/Request for a Status Update, it is now sixty (60) plus days and counting and Petitioner has not received notice of the actual filing; nor a Civil Action Number per FRAP;
- 4) Pursuant to FRAP Rule 5 (Serving and Filing pleadings and other papers); the Rule states:  
  
-5(b)(2)(F); delivering service by any other means that the person consented to in writing - in which event service is complete when the person making service delivers it to the Agency (clerk) to make delivery;  
  
and  
  
-5(d)(4)(Acceptance by Clerk) says, the clerk must not refuse to

file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice;

5) Pursuant to FRAP Rule 3 (Commencing an Action) and Rule 4 (Summons); the Rule states:

-R(3) a civil action is commenced by filing a complaint with the court;

-unless Rule 3 and Rule 4(A) are read together...substantive rights of a person(s) may be seriously affected without their knowledge that complaint has been filed in the Office of Clerk (Yudin v. Carrol), 57 F.Supp.793 (D.Ark.1944).

6) Pursuant to FRAP Rule 1 (Scope and Purpose); the rule states:

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

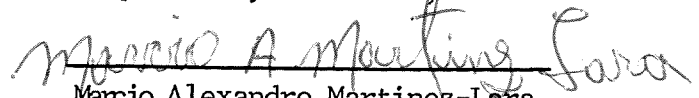
7) On or around January 8, 2020 Petitioner received notice from the Govt. informing Petitioner that although they received the original copy of Petitioner's §3582(c)(2) motion; the Docket had not yet reflected that Petitioner's petition had officially been filed by the Court clerk. (See Attachments #2).

8) By way of the above mentioned FRAP, Petitioner has met the correct form and filing with the Court, and requests the Court to proceed pursuant to Rule 1 and Rule 4; in which the Court must file, then issue a Show Cause Order to the Respondent to being the appellate proceedings and briefings;

WHEREFORE, Petitioner Mr. Martinez-Lara humbly requests that the Court GRANT this Motion and advise why there is a delay in having his 18 USC §3582 Motion filed and docketed appropriately; and next, issue a FRAP Show Cause Order to the Respondents thus beginning the Briefing Process and for such other and further relief deemed proper and necessary in the Interest of Justice.

Dated: 3-11, 2020

Respectfully Submitted,

  
Marcio Alexandro Martinez-Lara  
Pro Se/Fed #04417-070  
LSCI Allenwood  
PO BOX 1000  
White Deer PA 17887

AFFIDAVIT

I Hereby Certify that the foregoing facts are true and correct to the best of my knowledge and belief under penalty of perjury as per 28 USC Section 1746.

Marcio A. Martinez-Lara  
Marcio Alexandro Martinez-Lara, pro se

CERTIFICATE OF SERVICE

I Hereby Certify that a copy of the foregoing Petition/Motion was mailed on this 12 day of 3, 2020, by First Class Mail, postage prepaid to:

Office of the US Attorney

Gerard B. Sullivan

50 Kennedy Plaza 8th Fl.

Providence RI 02903

Marcio Alexandro Martinez-Lara, pro se

ATTACHMENT(S)

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Clerk of the Court  
Federal Bld. & U.S. Courthouse  
ONE EXCHANGE TERRACE  
PROVIDENCE, R.I. 02903-1270



9590 9402 2456 6249 9111 28

## 2. Article Number (Transfer from service label)

7019 2280 0000 7072 5471

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

## A. Signature

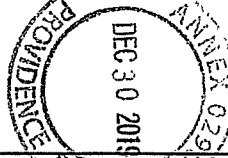
X *Roger Cole*☐ Agent☐ Addressee

## B. Received by (Printed Name)

ROGER COLE

## C. Date of Delivery

12/30/19

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

## 3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Attachment #1

01/13/2020



**U.S. Department of Justice**

*United States Attorney's Office  
District of Rhode Island*

50 Kennedy Plaza, 8<sup>th</sup> Floor  
Providence, Rhode Island 02903

(401) 709-5000  
FAX (401) 709-5001

January 8, 2020

Marcio Alexandro Martinez Lara  
Inmate No.: 04417-070  
FCI Allenwood Low  
Federal Correctional Institution  
P.O. Box 1000  
White Deer, PA 17887

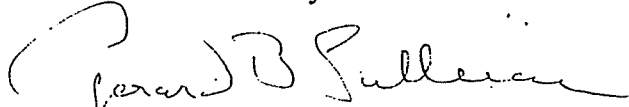
Re: United States v. Marcio Alexander Martinez Lara, CR17-116-S

Dear Mr. Martinez Lara:

Enclosed please find the original copy of your Motion for Modification of Sentence Pursuant to 18 U.S.C. § 3582(C)(2). This pleading is not currently filed with the United States District Court. If you would like this pleading to be filed you must send the original to the United States District Court at One Exchange Terrace, Providence, RI 02903.

Sincerely,

AARON L. WEISMAN,  
United States Attorney

  
GERARD B. SULLIVAN  
Assistant U.S. Attorney

GBS/ljb

Enclosure

Attachment #2

01/13/2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF RHODE ISLAND

US DISTRICT COURT  
DISTRICT OF RHODE ISLAND  
27 DEC 2019 AM 9:12

Marcio Alexandro Martinez-Lara  
(petitioner),

v.

United States of America  
(respondent)

Civil Action No.: \_\_\_\_\_

Criminal Action No.: 17-CR-00116(WES)

PETITIONER'S MOTION FOR MODIFICATION OF SENTENCE PURSUANT TO  
18 U.S.C. 3582(C)(2) DUE TO PETITIONER CHALLENGING THE  
CONSTITUTIONALITY OF HIS WAIVER OF RIGHTS PERTAINING TO HIS  
PLEA AGREEMENT AS WELL AS CHALLENGING ILLEGAL COUNTS PLEAD  
UNKNOWNLY AND UNVOLUNTARILY CAUSING AN ERROR(S) IN  
PETITIONER'S SENTENCING GUIDELINE CALCULATIONS  
(AND ALIKE)

Now Comes, Marcio Alexandro Martinez-lara, Pro Se, (Hereinafter Mr. Martinez-Lara or Petitioner), in the above-captioned matter, and hereby requests that this Honorable Court, Pursuant to 18 U.S.C. § 3582(C)(2) GRANT Petitioner's Motion and Request for a Reduced Sentence in light of multiple new changes in law and Supreme Court ruling in favor of Petitioner's case directly. As for Legal Reasons there of, Mr. Martinez-Lara states the following:

I. BACKGROUND

Petitioner signed a plea agreement and plead guilty on or around May 31, 2018. (See Dkt # 22 - Case 1:17-CR-00116-WES-PAS).

Petitioner plead guilty to count 1 through 14 of the indictment which charges defendant with: Distribution of Fentanyl (Counts 1, 3-6); Distribution of Cocaine (Count 2); Possession with Intent to Distribute 40 grams or more of Fentanyl (Count 7); Possession with Intent to Distribute a Kilogram or More of Heroin (Count 8); Possession with Intent to Distribute 50 grams or More of Methamphetamine (Count 10); Possession with Intent to Distribute Cocaine (Count 11); Conspiracy to Distribute Controlled Substances (Count 12); Felon in Possession





1417-070-13036  
Allenwood low  
Box 1000  
e Deer, PA 17887

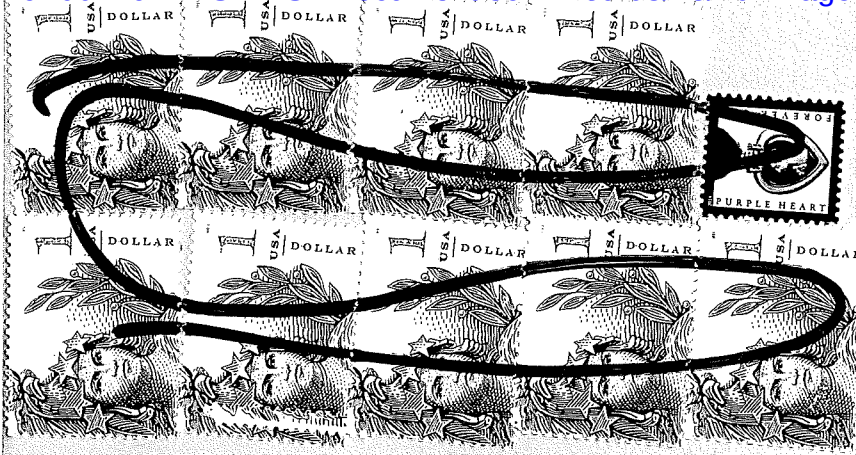
<>04417-070<> *Att. Clerk of Court*  
United States District Court  
District of Rhode Island  
One Exchange Terrace  
Providence, RI 02903-1270  
United States

Low Security Correction

Allenwood, PA 17001  
MAR 12 2020

Date

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility jurisdiction, you may wish to return material for further information or clarification. If the writer encloses correspondence forwarding to another address, please



*Legal Mail*

